

# Frederick County Planning Commission

## Meeting Minutes

September 16, 2009

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### COMMISSION MEMBERS PRESENT:

Joseph Brown  
Richard Floyd  
Kai Hagen, BoCC Liaison  
Catherine Forrence, Chair

John McClurkin, Secretary  
Audrey Wolfe  
Robert White, Vice Chair

### COMMISSION MEMBERS PRESENT:

Lara Roholt Westdorp, Chair  
Ronald Peppe, Sr., Vice Chair  
John Clapp

Sean Michalski  
Alan Duke  
Chris Manners

### PLANNING STAFF PRESENT:

Eric Soter, Director  
Mark Depo, Deputy Director  
Larry Smith, Zoning Administrator  
Shawna, Lemonds, Planner

John Thomas, Planner  
Tim Goodfellow, Planner  
Michael Chomel, Sr. Asst. County Attorney  
Kathy Mitchell, Asst County Attorney

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9:30 A.M.

MORNING SESSION

CHAIR FORRENCE BROUGHT THE MEETING TO ORDER AT 9:30 AM.

- 1) **PLANNING COMMISSION**..... **COMMENTS**  
None
- 2) **AGENCY COMMENTS/AGENDA** ..... **BRIEFING**  
None
- 3) **MINUTES** ..... **APPROVAL**  
A) August 5, 2009 FcPc Meeting – **Approved - 6-0-1-0 - MOTION: White/ 2<sup>nd</sup> Brown Yea-6** (Brown, Floyd, Forrence, Hagen, White, Wolfe), **Nay-0, Absent-1** (McClurkin), **Abstain-0**  
B) August 19, 2009 FcPc Meeting **Approved, with changes 6-0-1-0 MOTION: White/ 2<sup>nd</sup> Brown Yea-6** (Brown, Floyd, Forrence, Hagen, White, Wolfe), **Nay-0, Absent-1** (McClurkin), **Abstain-0**
- 4) **ZONING TEXT AMENDMENT** ..... **INFORMATIONAL**  
**Administration and Enforcement - ZT-09-05** (Joint FcPc/BOA Worksession) *Eric Soter, Shawna Lemonds*

The Division of Planning presented a summary of the proposed Administration and Enforcement (ZT-09-05) zoning text amendment for review and comment by the Planning Commission and the Board of Appeals.

The primary objectives of the amendment are: to reduce duplication, provide consistency with recently adopted text amendments, and reorganize/edit existing text to reflect current policy and practice regarding administration and enforcement process and procedures.

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The proposed text amendment edits and updates Article II: Administration and Enforcement; Article III: Review and Approval Procedures; Article IV: Regulations Applicable to All Districts; Article V: Zoning Map and Districts; Article VIII: Specific use Regulations, Article X: Optional Methods of Development, and Article XI: Definitions.

Discussion included legal issue decisions; language from state law and Frederick County's ordinance; interpretation of restrictions; length of time for BoCC action on Comprehensive Zoning or Re-Zoning; length of time between hearings; and keeping public informed.

In addition, other items discussed were: record retention; intent of policy; suggestions to add hyperlinks to the on-line version of the zoning ordinance; citation timing clarification; public comments (method of involvement) to text amendments; word changes/corrections and numbering adjustments were noted; and field site visits were addressed. BoCC's Commissioner Thomson addressed the Boards clarifying that pocket veto did not happen and explained the logic and reason behind a statutory denial [TS - 1:19:00](#).

#### Break 11:10 - 11:15

In addition, he read into record portions of a case from '74 involving a Mandatory Denial. Recommendations for special exceptions, variances, approvals, and standardization were made. Non-conforming structure variances and the aim for conformity and compliance were discussed. An individual member requested use of the '*practical difficulty standard*' rather than the '*unreasonable hardship*' within the variance criteria however a formal recommendation was not made. Other County representatives that addressed the Board included statements and/or clarifications from Sr. Asst. County Attorney Chomel, and Asst. County Attorney Mitchell.

Director Soter noted BOA's collective comments could be included in the FcPc Staff Report if they submitted them to him. The Planning Commission Public Hearing is scheduled to be held October 21<sup>st</sup> and the BoCC shortly after.

#### 5) ZONING TEXT AMENDMENT.....INFORMATIONAL

[Parking, Landscaping, and Lighting Draft Text Amendment](#)

The Division of Planning will present a summary of the proposed Parking, Landscaping, and Lighting Draft zoning text amendment for review, and comment by the Planning Commission. (Mark Depo, Shawna Lemonds)

#### 6) TRAFFIC STUDY.....INFORMATIONAL

[MD 180 / 351 Project Planning Study - Locally Preferred Alternative Recommendation](#)

The Division of Planning presented the MD 180-351 Planning Study to review alternatives for improving the existing capacity and traffic operations along MD 180 and MD 351 - from Greenfield Drive to Corporate Drive. The FcPc reviewed the study's alternatives and forwarded comments to the BoCC. (John Thomas) [TS - 2:37:43](#)

Planner Thomas presented the staff report explaining the three alternatives and the various options within those alternatives. He explained some of the short term alternatives and their overlaps. Ms. Kameel Hall, Project Manager, MD SHA, explained the interchange options proposed

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for Alternative 3. It was noted that Alternative 3, option 3B modified was the only alternative that removed all level of service F intersections; but, it had the highest cost. There was brief discussion on the alternatives and funding.

**MOTION:** Commissioner Brown made a motion to recommend to the BoCC that they Adopt Alternative 3, Option 3B Modified of the MD 180-351 Planning Study Alternatives. [TS - 3:03:06](#)

**White / 2<sup>nd</sup> Brown – Approved 3-2-1-1**

**Yea-3**(Brown, White, Wolfe), **Nay-2** (Floyd, Forrence), **Absent-1**(McClurkin), **Abstain-1**(Hagen)

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**LUNCH Break 12:30 – 1:30**

#### 7) [WATER & SEWERAGE PLAN AMENDMENT \(Summer 2009 Cycle\)](#) **FINDING-OF-CONSISTENCY**

- a. The following are requests to amend the County Water & Sewerage Plan, for the purpose of determining consistency with the County's Comprehensive Plan: (Tim Goodfellow)

##### **1st Case      WS-09-02**

**BOARD OF COUNTY COMMISSIONERS:** Proposed text change to require any extension or expansion of community water and sewerage systems into land located within a municipal corporation or growth area to be consistent with both the County's and the Municipal's Comprehensive Plan.

**Staff Presentation:** Planner Goodfellow presented the Staff Report.

**Recommendation:** Staff recommends a finding of inconsistency with the County's Comprehensive Plan.

Director Soter summarized and clarified that there were issues including: using the county's comprehensive plan designation on land that is within municipal corporate ground limits; references to the Environmental Article 9501, 9505 & 9506 definition do not refer to a county *comprehensive plan*. Other 'fatal flaws' were noted including that the Text Amendment, as described, would require an additional Map Amendment to be consistent with both the County Comprehensive Plan and the Municipal plan, and the County does not designate the land use in a Municipal Corporation.

**Applicant:** Board of County Commissioner Thompson was the spokesman. He felt the Text Amendment was consistent with the Countywide Comprehensive Plan and wanted specific incidence where it was inconsistent. He used the analogy of "Townsville" described his interpretation.

Director Soter noted prior reasons mentioned for inconsistencies and Pg10 of the draft plan being stricken out. Commissioner Thompson noted the practice of the county 'acquiescing' was inconsistent with state law. Commission Hagen noted that there was not a '*public right*' to public water & sewer service. Other issues discussed were absorbing municipal plan designations and map annexation.

##### **Public Comment:**

- Andrew dePasquale - Esquire, Miles and Stockbridge – Opposed
- Bruce Dell – P & Z Administrator, City of Brunswick MD – Opposed
- Bill Beckly – Town of Thurmont - Opposed

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**Rebuttal:** BoCC's Commissioner Thompson reaffirmed opinion that this plan was consistent with the Counties Comprehensive Plan, and noted that *'that is the only'* decision being made today. Commissioner Brown stated he felt this was inconsistent with Comp Plan because the plan does not have map designation that allow for this ordinance to go into play; however, if a decision was made to send this to the BoCC, it should go with a recommendation that they should: 1). adopt map designations within the municipalities, and have it 2). only apply to town/counties that are sharing utilities (water or sewerage) with the county. Certain towns that have their own public utilities should be exempt (Brunswick, Thurmont, and Emmitsburg).

**MOTION:** Commissioner White made a motion for Finding-of-Consistency. [TS - 5:29:46](#)

**White / 2<sup>nd</sup> Floyd – Approved 4-2-1-0**

**Yea-4**(Floyd, Forrence, White, Hagen), **Nay-2** (Brown, Wolfe), **Absent-1**(McClurkin), **Abstain-0**

#### **2nd Case**      **WS-09-03**

**TOWN OF NEW MARKET:** Tax Map 801, Parcel 3783, 3767, & 3828 - Requested re-classification from W-5 to W-3.

**Staff Presentation:** Planner Goodfellow presented the Staff Report.

**Recommendation:** Staff recommends a finding of consistency with the New Market Region Plan.

**MOTION:** Commissioner White made a motion for Finding-of-Consistency. [TS - 5:32:26](#)

**White / 2<sup>nd</sup> Wolfe – Approved 4-0-3-0**

**Yea -4**(Forrence, Hagen White, Wolfe), **Nay-0**, **Absent-3**(Brown, Floyd, McClurkin), **Abstain-0**

#### **3rd Case**      **WS-09-04**

**EAGLEHEAD COMMUNITY PRESERVATION CORPORATION:** Adding water booster pump station symbol – Aspen North Village.

**Staff Presentation:** Planner Goodfellow presented the Staff Report.

**Recommendation:** Staff recommends a finding of consistency with the New Market Region Plan.

**MOTION:** Commissioner White made a motion for Finding-of-Consistency with the New Market Plan. [TS - 5:35:30](#)

**White / 2<sup>nd</sup> Wolfe – Approved 4-0-3-0**

**Yea -4**(Forrence, Hagen White, Wolfe), **Nay-0**, **Absent-3**(Brown, Floyd, McClurkin), **Abstain-0**

#### **4th Case**      **WS-09-05**

**ST IGNATIUS OF LOYOLA CATHOLIC CHURCH**

**TAX MAO 97, PARCEL 186:** Adding multi-use sewage treatment symbol

**Staff Presentation:** Planner Goodfellow presented the Staff Report.

**Recommendation:** Staff recommends a finding of consistency with the Urbana Region Plan.

Other County representatives that addressed the Board included Director Sorter clarified what the role of FcPc and statements and/or clarifications from Asst. County Attorney Kathy Mitchell.

**Applicant:** Chris Mayo and Michael Profit

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Commissioner White felt this did not meet the requirement for consistency with the comprehensive plan. There was discussion regarding the different definitions that the health department and the county have involving a 5000 gallon system as opposed to 5000 gallons of effluent.

*Commissioner Forrence swore everyone to truth of statements spoken prior.*

Assistant County Attorney Mitchell noted, that the FcPc had to ask themselves if the proposed multi-use system symbolis 'consistent with' or 'contrary to' the policies and land use designations within the Comprehensive Plan.

*MOTION:* Commissioner Wolfe made a motion for Finding-of-Consistency with the Urbana Region Plan. *TS - 5:57:50*

**Wolfe / 2<sup>nd</sup> Hagen – Motion Failed 2-2-3-0**

**Yea -2(Hagen, Wolfe), Nay-2 (Forrence, White), Absent-3(Brown, Floyd, McClurkin), Abstain-0**

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*MOTION:* Commissioner Hagen made a motion to continue to the next FcPc meeting when more of the commission can be present for the vote. *TS - 5:58:30*

**Hagen / 2<sup>nd</sup> Wolfe – Motion Passed 3-1-3-0**

**Yea -3(Forrence, Hagen, Wolfe), Nay-1 (White), Absent-3(Brown, Floyd, McClurkin), Abstain-0**

**5th Case      WS-09-06**

**FCD DEVELOPMENT, LLC (CLEMSON PROPERTIES):** Tax Map 57, Parcel 321 - Requested re-classification of 37 acres from W-5/S-5 to W-3/S-3

**Staff Presentation:** Planner Goodfellow presented the Staff Report.

*All parties and Staff wishing to give testimony in this matter were sworn in by Catherine Forrence.*

**Applicant:** Bruce Dean, McEvoy & Dean spokesman.

**Recommendation:** Staff recommends a finding of consistency with the Frederick Region Plan.

*MOTION:* Commissioner Hagen made a motion for Finding-of-Consistency with the Countywide Comprehensive Plan with Frederick City Region Designation.. *TS - 6:03:20*

**Hagen / 2<sup>nd</sup> White Approved 4-0-3-0**

**Yea -4(Forrence, Hagen White, Wolfe), Nay-0, Absent-3(Brown, Floyd, McClurkin), Abstain-0**

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**8)      SOLID WASTE MANAGEMENT PLAN (SWMP) AMENDMENT.....RECOMMENDATION**

- a. Staff from the Division of Utilities and Solid Waste Management will be presenting amendments to the Solid Waste Management Plan for Planning Commission Review and Recommendation to the Board of County Commissioners. (Eric Soter and DUSWM)

**\*\*\* ADJOURNED MEETING AT 4:29 \*\*\***

Respectfully Submitted,

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Catherine Forrence, Chair

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